

# State of South Dakota

## EIGHTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2013

427U0077

HOUSE BILL NO. 10

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to revise the compensation requirements payable to surface  
2 owners for exploration damages and to allow the payments to be made in multiple  
3 installments.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 45-5A-4 be amended to read as follows:

6 45-5A-4. The mineral developer shall pay the surface owner a sum of money equal to the  
7 amount of damages sustained by the surface owner for ~~loss of agricultural production, lost land~~  
8 value, lost use of the surface owner's land, lost access to the surface owner's land, and lost value  
9 of improvements caused by mineral development. The amount of damages may be determined  
10 by any formula mutually agreeable between the surface owner and the mineral developer. In  
11 determining damages, ~~consideration shall be given to the parties shall consider give~~  
12 consideration to the period of time during which the loss occurs and the surface owner may elect  
13 to be paid damages. The mineral developer shall pay this sum in annual installments over a  
14 period of time unless the surface owner elects to receive the sum in one up-front payment.  
15 ~~However, the surface owner shall be compensated for harm caused by exploration only by a~~  
16 ~~single sum payment.~~ The payments contemplated by this section shall only cover land directly



1 affected by mineral development. Payments under this section ~~for lost land value~~ shall be paid  
2 only to the title holder of such land. Any reservation or assignment of such compensation apart  
3 from the surface estate except to a lessee of the surface estate is prohibited. In the absence of  
4 an agreement between the surface owner and lessee as to the division of the compensation  
5 payable under this section, the lessee is entitled to recover from the surface owner that portion  
6 of the compensation attributable to the tenant's share of the damages sustained.

7 Section 2. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as  
8 follows:

9       The mineral developer shall pay the surface owner a sum of money equal to the amount of  
10 damages sustained by the surface owner and the surface owner's tennant, if any, for loss of  
11 agricultural production and income caused by mineral development. The amount of damages  
12 may be determined by any formula mutually agreeable between the surface owner and the  
13 mineral developer. In determining damages, the parties shall give consideration to the period  
14 of time during which the loss occurs. The mineral developer shall pay the surface owner this  
15 sum in annual installments over a period of time unless the surface owner elects to receive the  
16 sum in one up-front payment. Payments under this section shall be paid only to the title holder  
17 of such land. Any reservation or assignment of such compensation apart from the surface estate  
18 except to a lessee of the surface estate is prohibited. In the absence of an agreement between the  
19 surface owner and lessee as to the division of the compensation payable under this section, the  
20 lessee is entitled to recover from the surface owner that portion of the compensation attributable  
21 to the tenant's share of the damages sustained.

22       Section 3. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as  
23 follows:

24       The mineral developer shall compensate the surface owner for damages caused by mineral

1 exploration for loss of agricultural production and income, lost land value, lost use of the  
2 surface owner's land, lost access to the surface owner's land, and lost land value of  
3 improvements. In determining damages, the parties shall give consideration to the period of time  
4 during which the loss occurs. The mineral developer shall pay the surface owner this sum in  
5 annual installments over a period of time unless the surface owner elects to receive the sum in  
6 one up-front payment. Payments under this section shall be paid only to the title holder of such  
7 land. Any reservation or assignment of such compensation apart from the surface estate except  
8 to a lessee of the surface estate is prohibited. In the absence of an agreement between the surface  
9 owner and lessee as to the division of the compensation payable under this section, the lessee  
10 is entitled to recover from the surface owner that portion of the compensation attributable to the  
11 tenant's share of the damages sustained.

12 Section 4. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 Unless both parties provide otherwise by written agreement, at the time the notice required  
15 by § 45-5A-5 is given, the mineral developer shall make a written offer of settlement to the  
16 person surface owner of the affected land for the payments provided for in sections 1 and 2 of  
17 this Act.

18 Section 5. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 If the surface owner rejects the settlement offer given pursuant to section 5 of this Act, the  
21 surface owner may bring an action for compensation in the court of proper jurisdiction. If the  
22 compensation awarded by the court is greater than the amount offered by the mineral developer,  
23 the court shall award the surface owner reasonable attorney's fees, costs assessed by the court,  
24 and interest on the amount of final compensation awarded by the court from the day drilling is

1 commenced.